



**COMISIÓN NACIONAL DE LOS  
MERCADOS Y LA COMPETENCIA**



**PRO/CNMC/002/16 PROPOSAL ON  
REGULATION OF THE AUTOMOTIVE  
FUEL DISTRIBUTION MARKET  
THROUGH UNATTENDED SERVICE  
STATIONS**

**28 July 2016**

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## I BACKGROUND

The Spanish automotive fuel sector has been the focus of frequent attention from the perspective of competition and efficient economic regulation.

From an advisory standpoint, the former CNCCNC and CNE, the CNMC itself and the European Commission have carried out several studies on this sector in recent years. The analyses almost invariably reveal structural problems of lack of competition in this market, which is strategic to national productivity and the proper functioning of many markets that require this input, *inter alia*, the road transport market.

Specifically, the CNMC and former CNC have pointed out various regulatory restrictions on competition in the wholesale and retail road fuel segments. The different studies and reports of the competition authority identify restrictions on access to and exercise in upstream refining markets, the fuel transport market<sup>1</sup> and the neighbouring storage market<sup>2</sup>. Downstream, in the retail fuel distribution markets, the level of competition has also been insufficient. However, [Royal Decree-Law 4/2013, of 22 February, on measures for supporting entrepreneurs and stimulating growth and job creation](#) has facilitated the introduction of competition as a result of the elimination of various regulatory unjustified restrictions on the opening of service stations<sup>3</sup>. The consequent appearance of new service stations, based on innovative business models, is already having favourable effects for consumers in the short term.

The greater competitive pressure generated by these new entrants unequivocally benefits consumers and makes it possible to improve prices for the same quality. It also facilitates freedom of choice, in the form of a greater

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<sup>1</sup> For example: the Report on Competition in the Automotive Fuel Sector (2009), Follow-Up to the Report on Automotive Fuels by the TNC (2011), Report monitoring the Spanish automotive fuel distribution market (2012) and Report on the query by the State Secretariat of the Economy and Business Support on the Spanish automotive fuel market (2012). All of these reports are available on [www.cnmc.es](http://www.cnmc.es)

<sup>2</sup> The most recent study, carried out by the CNMC and focused on the wholesale fuel market, was published in June 2015. *E/CNMC/002 - Study on the wholesale automotive fuel market in Spain*.

<sup>3</sup> In the retail segment of the sector, Royal Decree-Law 4/2013 eliminates administrative barriers, simplifies procedures for opening new retail fuel supply facilities and provides measures promoting the entrance of new operators. Likewise, it facilitates the opening of service stations at shopping centres, business parks, MOT stations and industrial areas or estates, furthering the objectives established by Royal Decree-Law 6/2000, of 23 June.

variety of fuel supply formats (petrol and diesel oil) and greater geographical availability. It also ensures greater competition in the retail fuel sector, with new entrants with maverick<sup>4</sup> traits.

In short, technological advances<sup>5</sup> and recent liberalising regulations have allowed the entrance of new operators in Spain. With their competition they generate incentives for improving prices, quality and innovation among all operators, both new and incumbents.

However, this Commission has found that this new competitive pressure - beneficial for users- is under threat in different parts of Spain. Specifically, there is now a debate on the desirability of prohibiting the supply of automotive fuels at unmanned service stations (SS). Unmanned service stations are defined in the regulations as not having personnel on the premises.

Based on the experience of other sectors, the pressure to introduce new sector regulations prohibiting certain formats that are already well-established in Europe (as is the case for unmanned service stations) or traditional in Spain (as in the case of diesel oil supply points in agricultural cooperatives), is largely a predictable reaction to the greater economic freedom recently introduced in the sector. The fact that it is predictable does not mean it is less harmful for consumers and for business activity. On the contrary, it should be noted that, without an analysis adequately founded on efficient economic regulation and the principles of necessity and proportionality, such restrictive legal regulations hinder both the exercise of the economic activity of alternative operators and the benefits to consumers. In the most extreme cases, some regulations threaten to exclude them from the market, perpetuating the traditionally low level of competition in retail fuel supply and adversely affecting users<sup>6</sup>.

The arguments put forward to justify restricting free enterprise and the freedom of choice of individual consumers are: safety, consumer protection, environmental protection and job maintenance. These arguments are limited to stating imperative reasons of overriding public interest (IROPI) without an

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<sup>4</sup> A maverick is a company that will most probably break up any potential coordinated effects. These operators play a disruptive role in the markets, competing effectively and thus benefiting consumers and users. See [Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings](#) and [Horizontal Merger Guidelines of the US Department of Justice and the Federal Trade Commission \(2.1.5 Disruptive Role of a Merging Party\)](#).

<sup>5</sup> including in the supply of fuels, remote monitoring and means of payment.

<sup>6</sup> Vid. [Economic report on the denial of authorisation for installing a service station in a shopping centre in the Town Hall of Marratxí – UM/070/15](#).

appropriate basis in the presence of market failure that would make it advisable to restrict competition, or without the causal link that must exist between the alleged IROPI and the limitation of competition to be introduced by the regulation. In fact, the arguments put forward contradict the empirical evidence, do not fit with the widespread tradition of the service stations that have been operating for decades in agricultural cooperatives in Spain and are incompatible with the comparative analysis of the unmanned service station format, which is quite normal in similar markets in other EU Member States.

Facilitating entrance and the exercise of the fuel supply business at service stations is essential for competition in the sector. Specifically, neither companies nor users should be prohibited from freely choosing between service stations with or without physical personnel on the premises. Otherwise, the introduction of unjustified restrictions will hinder the development of business models already established in other EU countries, with an unfavourable economic and legal impact on the public interest.

## **II THE RETAIL FUEL DISTRIBUTION MARKET THROUGH UNATTENDED SERVICE STATIONS**

The retail distribution of road fuels through service stations is an important activity for the Spanish economy, both for its economic value, worth over EUR 40,000 million annually, and for its effect on the mobility of the population, goods transport by road and the general competitiveness of companies in the Spanish market and in export markets, essentially those of the European Union.

Service stations are the main source of supply of road fuels for final consumers, individuals, companies and even the public sector. If suppliers compete on location, prices, quality and service this has a clear impact in terms of well-being (households) and competitiveness (companies).

This position report analyses the existing entry and exercise barriers in the unattended SS implementation process from the perspective of competition and efficient economic regulation.

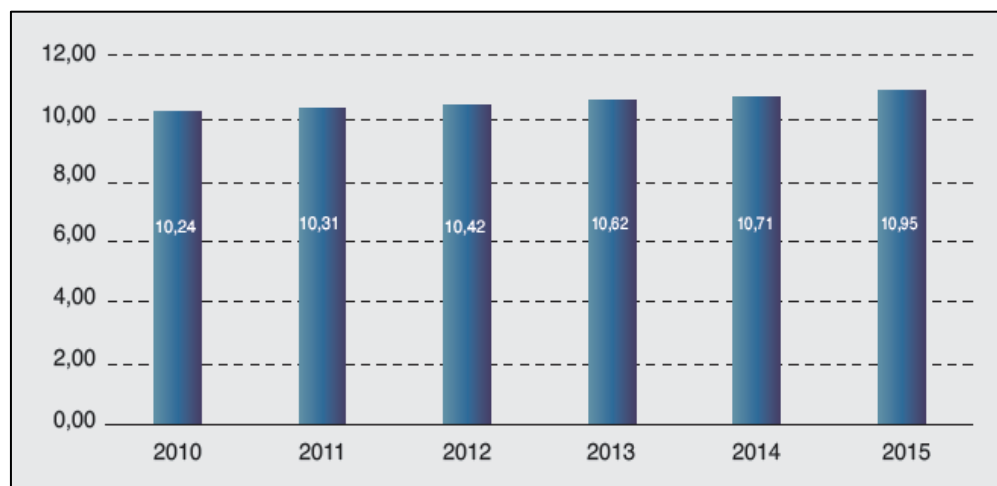
The preparation of this report on Article 5.1.h of Law 3/2013 is motivated by various factors:

- Firstly, the retail road fuel supply segment through service stations is a market with a highly concentrated offer, horizontally and

vertically, and fragmented demand. In Spain there are 9,814 service stations in operation<sup>7</sup>, mainly owned by or linked to wholesale operators vertically integrated with the refining activity and, until recently, with transport and storage. According to the latest CNMC study, the main operator on the automotive fuel market is Repsol, with 34% of market share in terms of number of service stations in Spain, followed by Cepsa (15%), Galp (6%), Disa (5%) and BP (4%)<sup>8</sup>. The other service stations are independents (not linked to wholesale operators or with refining capacity in Spain) or associated with smaller wholesale operators.

In terms of points of sale, the number of service stations has grown without interruption in Spain from 2010 to 2015. Despite this, the annual growth rate is low, approximately 1%. A slightly higher net growth in the number of service stations can be observed since the approval of Law 1/2013, of 26 July, on measures in favour of entrepreneurs and stimulus for growth and job creation, although growth continues to be low.

**Graph 1: Changes in the number of service stations in Spain (in thousands)**



Source: AOP, 2015 Report

<sup>7</sup> Source: Geoportal of the Ministry of Industry, Energy and Tourism (number of service stations in Spain that report their prices to MINETUR, June 2016). According to the Spanish Association of Oil Product Operators (AOP), there were 10,947 points of sale in Spain at 31 December 2015.

<sup>8</sup> E/CNMC/002 - Study on the wholesale automotive fuel market in Spain.

The limited net growth in the number of service stations could still be linked to the existence of market entry barriers, which prevent operators from opening new service stations in the Spanish territory. In this sense, Law 1/2013, taking into account the 2012 [Report on the query by the State Secretariat of the Economy and Business Support on the Spanish automotive fuel market](#), included a series of measures to encourage competition in the retail road fuel market<sup>9</sup>.

Likewise, the CNC, in its discussion paper on the Spanish Property Market, indicated that the land classification technique used in Spain unjustifiably limited the offer of economic activities such as the distribution of fuels through service stations. To ameliorate this problem, the former CNC recommended promoting urban planning in which the uses defined by land classification are not unnecessarily detailed, in order to increase flexibility, reduce segmentation and favour competition in land use allocation<sup>10</sup>.

- Secondly, unmanned service stations have two different dimensions in Spain:
  - i. On one hand, unmanned service stations have recently been introduced but are not yet widely used among the main sector operators, compared to other EU countries. In fact, this type of format is mainly linked to independent operators with greater maverick traits, not integrated with wholesale or refining activities<sup>11</sup>.
  - ii. On the other hand, unattended supply points have long existed in agricultural cooperatives. Over many years, these have empirically demonstrated that they do not endanger imperative reasons of overriding public interest,

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<sup>9</sup> Article 39. Amendment of Law 34/1998, of 7 October, on the hydrocarbon sector.

<sup>10</sup> Analysis by the TNC of the competition problems in the Spanish property market (2013).

<sup>11</sup> According to data provided by the Spanish National Association of Unmanned Service Stations (ASEAE), the main sector operators are Ballenoil, Petropix, Red Ahorro, Reposta, Settran, Autonet, Petrolowcost, Easy Fuel, Petrocar and Nafte.



and are useful for encouraging free enterprise and more dynamic markets<sup>12</sup>.

- As a third point, there are increasing barriers to entry and even permanence for unattended service stations in the Spanish retail automotive fuel supply market. The existence of barriers to the entry and exercise of this type of service stations limits their penetration and expansion throughout Spain. Both in Europe, with unmanned service stations and in Spain, with unattended supply points in agricultural or agri-food co-operatives, there is a long tradition of so-called "unattended" service stations, which are widely accepted by consumers and companies. The most relevant entry barriers, at present and in the short term, unjustifiably arise from the regulations of various Spanish public authorities, particularly certain regional authorities.

This sale format has also been introduced by some integrated oil operators, such as Repsol and Cepsa. However, the two operators together have a total of circa 35 unattended SS throughout Spain.

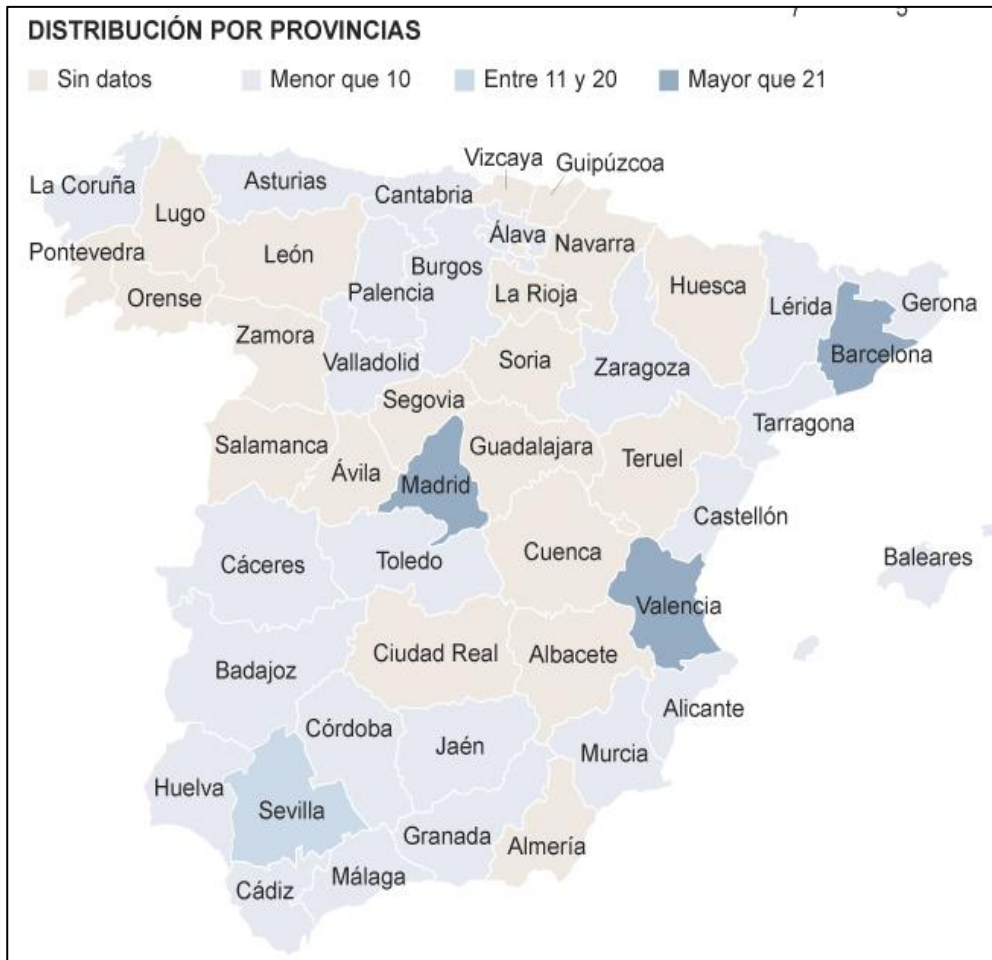
With respect to the geographical distribution of this type of service stations, mention must be made of the following:

The unmanned SS format is currently highly concentrated in three provinces: Barcelona, Madrid and Valencia. The appearance of this type of format in Spain is emerging in the main urban communities.

**Graph 2: Geographical distribution of unattended service stations in Spain**

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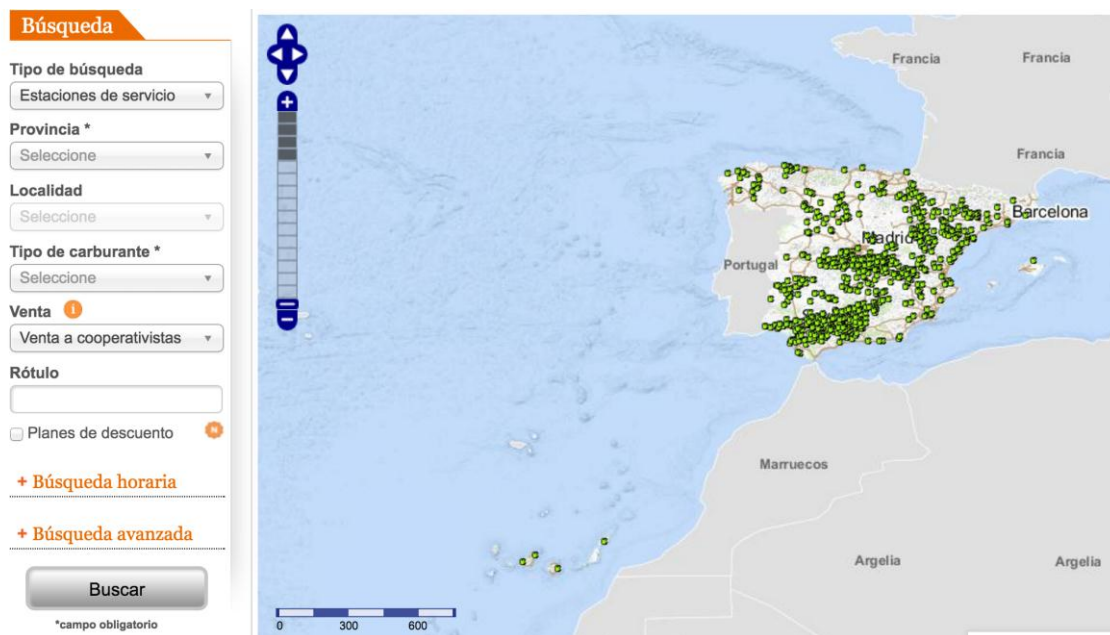
<sup>12</sup> See, inter alia, [Law 27/1999, of 16 July, on Co-operatives \(Article 93\)](#) and [Law 20/1990, of 19 December, on the Co-operative Tax Regime](#). (Articles [9](#) and [13](#)).



Source: ASEAE

The unattended SS format in co-operatives is widely distributed in all the Spanish provinces where such co-operatives exist.

**Graph 3: Distribution of unattended service stations in Spanish co-operatives**



There are no official data on the number of unattended service stations in Spain. However, there are fewer than in other European countries.

The members of the Spanish National Association of Unmanned Service Stations ([AESAE](#)) include the leading operators of this type of SS in Spain (Ballenoil, Petroprix, Gasexpress, Settram, Nafte, Petrocar and Autonet&Oil). This association estimates that there are approximately 300 unmanned supply units in Spain, and possibly as many as 5% of the total service stations in Spain<sup>13</sup>. This percentage is much lower than that of other European partners, where this format has greater penetration. Specifically, in Belgium 18.6% of service stations are unattended, in Denmark 65.9%, in the Netherlands 23.7% and in Sweden 61.1%<sup>14</sup>. As Table 1 shows, assuming 5% of service stations in Spain are unattended, only three of the leading EU countries have a lower percentage than Spain, while in Denmark and Sweden more than half of the total service stations are unattended.

**Table 1: Distribution of unattended service stations by country:**

Country	% Unattended Unattended SS
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<sup>13</sup> Taking into account the 300 AESAE member service stations, plus others that do not belong to the Association, which include service stations of companies with refining capacity in Spain.

<sup>14</sup> [Consumer Market Study on the Functioning of the market for Vehicle Fuels from a Consumer Perspective – European Executive Agency for Health and Consumers.](#)

Belgium	<b>18.6%</b>
Denmark	<b>65.9%</b>
Germany	4.6%
France	<b>8.8%</b>
Italy	0.7%
Netherlands	<b>23.7%</b>
Austria	<b>10.8%</b>
Sweden	<b>61.1%</b>
United Kingdom	2.9%

*Source: Consumer Market Study on the Functioning of the market for Vehicle Fuels from a Consumer Perspective*

As regards prices, in Spain independent service stations, which include most unattended service stations, established lower average retail prices in 2015<sup>15</sup>.

The monthly price breakdown also gives the same result: the prices of independent service stations are, almost without exception, lower than the prices of branded service stations. This is reflected in the most recent supervisory report on the automotive fuel market issued by the CNMC in May 2016:

**Table 2. Average prices (€/l) in wholesale operator networks:**

<sup>15</sup> [Annual Supervisory Report on the Distribution of Fuels through Service Stations in Spain - CNMC.](#)

OPERADORES AL POR MAYOR				
	Gna 95		GoA	
	PVP medio €/lt	Diferencia vs. Mes anterior c€/lt.	PVP medio €/lt	Diferencia vs. Mes anterior c€/lt.
REPSOL	1,200	2,484	1,061	5,139
CEPSA	1,201	2,784	1,058	5,145
BP OIL	1,204	2,706	1,053	5,032
DISA PENÍNSULA	1,177	2,532	1,024	4,623
GALP ENERGÍA	1,183	2,455	1,032	4,706
RESTO OPERADORES	1,159	2,579	1,017	4,519

Source: [CNMC](#)

**Table 3: Average prices (€/l) in independent facilities:**

Source: [CNMC](#)

INDEPENDIENTES				
	Gna 95		GoA	
	PVP medio €/lt	Diferencia vs. Mes anterior c€/lt.	PVP medio €/lt	Diferencia vs. Mes anterior c€/lt.
TOTAL INDEPENDIENTES	1,140	2,794	0,984	4,219
SÓLO HIPERS	1,116	2,687	0,956	4,332

It can therefore be concluded that independent service stations (as a proxy of unattended service stations) establish lower retail prices in Spain, with a significant difference in prices.

This difference in prices also occurs at the European level. According to a study carried out for the *European Commission Executive Agency for Health and Consumers*, for a sample of countries analysed (a total of 14 countries), the retail prices of unattended service stations were lower in 13 of the 14 countries analysed.<sup>16</sup> On average, 95 octane petrol was 1.9% more expensive in attended service stations than in unattended service stations in the analysed countries, with an average difference of more than 2.7% in the case of diesel. The most

<sup>16</sup> [http://ec.europa.eu/consumers/consumer\\_evidence/market\\_studies/vehicle\\_fuels/docs/study\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/market_studies/vehicle_fuels/docs/study_en.pdf). Number of observations: 643. Observations made in 14 countries from January 2005 to January 2013.

significant price differences were found in Belgium, Austria and Norway, with Greece being the only country analysed where the price of 95 octane petrol was higher in unattended service stations.

**Table 4: Prices of 95 octane petrol by country and type of SS:**

Country	Prices in Attended SS	Prices in Unattended SS	Price Diff.
Belgium	1.63	1.53	-6.10%
Denmark	1.6	1.58	-1%
Estonia	1.32	1.32	-0.40%
Greece	1.69	1.71	1.30%
Spain	1.38	1.36	-1.40%
Latvia	0.95	0.95	-0.70%
Lithuania	1.39	1.37	-1.40%
Netherlands	1.78	1.72	-3.10%
Austria	1.45	1.34	-7.30%
Slovenia	1.48	1.47	-0.30%
Finland	1.63	1.63	-0.10%
Sweden	1.68	1.65	-1.50%
Iceland	1.53	1.52	-0.50%
Norway	1.96	1.88	-4.50%

*Source: Consumer Market Study on the Functioning of the market for Vehicle Fuels from a Consumer Perspective.*

**Table 5: Prices of Diesel 95 by country and type of SS:**

Country	Prices in Attended SS	Prices in Unattended SS	Price Diff.
Belgium	1.5	1.4	-7.30%
Denmark	1.5	1.45	-3.60%
Estonia	1.4	1.39	-0.20%
Spain	1.37	1.33	-3.00%
Latvia	0.96	0.95	-1.00%
Lithuania	1.32	1.32	-0.20%
Netherlands	1.5	1.44	-3.60%
Austria	1.46	1.37	-6.00%
Slovenia	1.4	1.39	-0.50%
Finland	1.56	1.52	-2.40%
Sweden	1.71	1.68	-1.40%
Iceland	1.59	1.58	-0.40%
Norway	1.85	1.76	-5.10%

*Source: Consumer market study on the functioning of the market for vehicle fuels from a consumer perspective.*

Likewise, in the latest OECD report on the level of competition in the automotive fuel market<sup>17</sup> in the different OECD Member States in 2013, the Norwegian authority indicated that the gross distribution margin of unattended service stations was 10% less than that of attended service stations. The former Dutch competition authority (NMa) also provided evidence of the drop in prices as a consequence of the entrance of unattended service stations<sup>18</sup>. Lastly, Bruzikas and Soetevent<sup>19</sup> quantify the lower costs of unattended service stations in the Netherlands: service stations that went from being attended to being unattended reduced costs by 4.5 and 3.1 ct/l (on motorways and on other roads, respectively). In addition, in the case of non-motorway service stations, indirect effects in terms of competition can be observed: doubling the number of unattended service stations in a district represents a reduction of 0.22 ct/l.

Therefore, there is evidence of the lower price of fuel in unattended service stations, arising from the lower costs of the facilities, which make it possible to offer a lower price for end consumers.

On the other hand, in Spain the high concentration of the other fuel sector segments, in addition to the retail segment, reinforces the market power of the three operators with refining installed capacity in Spain (Repsol, Cepsa and BP) and strengthens the barriers for potential new entrants. An impermeable market can: (i) lead to inefficiently, high and non-competitive pricing structures, (ii) restrict free competition, and (iii) weaken competitors, impeding the entrance and development of alternative operators.

Due to the foregoing, barriers to market entry must be removed and the retail segment of unattended service stations must be boosted in order to eliminate discrimination by format and facilitate the entrance of operators in the market. Such a potential or actual entrance would increase effective competition in this market segment and reduce price inefficiencies. This would also allow wholesale operators not integrated with refining activities to have sufficient downstream clients to grow, and unite the Spanish market to make the supply

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<sup>17</sup> <https://www.oecd.org/competition/CompetitionInRoadFuel.pdf>

<sup>18</sup> <https://www.acm.nl/en/publications/publication/6028/NMa-on-the-Petrol-Market-Increasing-Competition-Extends-to-the-Subsidiary-Road-Network/>

<sup>19</sup> *Detailed Data and Changes in Market Structure: The Move to Unmanned Gasoline Service Stations* (2014).

of fuel competitive in larger geographical markets (and not only in local markets).

For this reason, we will provide an exhaustive analysis of the barriers to entry and exercise of this activity introduced by state and regional regulations and laws which obstruct or directly prevent operators that wish to install unattended service stations from accessing the market.

### **III DEFINITION OF UNATTENDED SERVICE STATIONS**

For the purposes of this report and on the basis of the regulations in force, the definitions of supply unit, service station and unattended service station must be specified.

Therefore, in accordance with [Royal Decree 1905/1995, of 24 November](#), approving the Regulations on the retail distribution of fuels and petroleum fuels at retail facilities, and the Additional Provision One of Law 34/1992, of 22 December, on the regulation of the oil sector:

- a. Supply unit: distributes fewer than three petrols and/or automotive diesel oils.
- b. Service station: sells three or more petrols and/or automotive diesel oils to the general public.

Likewise, [Royal Decree 2201/1995, of 28 December](#), approving Complementary Technical Instruction MI-IP 04 on “*permanent facilities for the retail distribution of fuels and petroleum fuels at retail facilities*,” subsequently amended by [Royal Decree 1523/1999, of 1 October](#), amending the Regulation of oil facilities, approved by Royal Decree 2085/1994, of 20 October, and MI-IP03 complementary technical instructions, approved by Royal Decree 1427/1997, of 15 September, and MI-IP04, approved by Royal Decree 2201/1995, of 28 December, define:

- a. Attended facilities: those where the filling operation is performed by the personnel on the premises.
- b. Unattended facilities: those with no personnel on the premises, where the filling operation is performed by the user.
- c. Self-service facilities: those in which the filling operation is performed by the customer, but the fuel pump is activated by an employee from



the facility control centre, who can authorise the delivery and, in an emergency, stop and lock the fuel pump.<sup>20</sup>

Lastly, in accordance with [Article 39.2 of Royal Decree-Law 4/2013, of 22 February](#), on measures in favour of entrepreneurs and stimulus for growth and job creation, amending Law 34/1998, on 7 October, on the Hydrocarbon Sector, the wording of its Article 43.2 remains as follows:

*“The activity of retail fuel and petroleum fuel distribution may be freely exercised by any natural or legal person. Such facilities shall comply with the mandatory control acts for each type of facilities, in accordance with the complementary technical instructions established, in addition to fulfilling the other regulations in force applicable at any given time, particularly those relating to metrology and measurement technology and to the protection of consumers and users. The regional authorities, in the exercise of their competences, shall guarantee that the control acts that affect the implementation of these retail fuel supply facilities are integrated in a single procedure and before a single authority [...]*

*The territorial or urban planning instruments will not be able to regulate technical aspects of the facilities or request a specific technology. The uses of land for individual or group commercial activities, shopping centres, business parks, MOT testing establishments and industrial areas or estates shall be compatible with the economic activity of the retail fuel supply facilities. These facilities shall also be compatible with the uses that are suitable for the installation of activities with similar levels of danger, waste or environmental impact, without expressly specifying classification as suitable for service stations.”*

This amendment to Article 43.2 is intended to boost the segment of retail automotive fuel supply through SS in order to increase the level of competition in the market and reduce the price of fuels, resulting in a greater well-being of consumers. Therefore, it is necessary to review any regulation, whether national, regional or local, that prevents the correct development of retail fuel distribution and increases the barriers for entering and exercising in this market.

#### **IV OBLIGATIONS INHERENT TO THE SUPPLY UNITS**

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<sup>20</sup> Annex II, Chapter I of Complementary Technical Instruction MI-IP 04 on vehicle supply facilities.

In accordance with the regulations in force, the facilities used for the exercise of the activity of fuel supply through service stations must comply with the mandatory control acts for each type of facility, in accordance with the complementary technical instructions established by the technical and safety conditions of said facilities, in addition to fulfilling the other regulations in force applicable at any given time, particularly those relating to metrology and measurement technology and to the protection of consumers and users.

Likewise, various autonomous regions have implemented specific regulations in which the fuel supply activity in the retail segment of the market is regulated and others have draft regulations approaching the approval stage. It is therefore necessary to analyse the regulations applicable to the activity, both at the national level and at the regional level, with the aim of identifying the obligations inherent to the supply units included in said regulation, and determining what obligations can unjustifiably limit access to the activity of unattended service stations.

#### **IV.1 Metrology regulations**

Article 9.1 of [Royal Decree 244/2016, of 3 June](#), implementing [Law 32/2014, of 22 December, on Metrology](#) establishes common and specific essential requirements that must be fulfilled by measuring instruments, subject to the metrological control of the State. The requirements of the measuring systems intended for the continued and dynamic measurement of amounts of liquids other than water are set out in [Annex XII](#) of the aforementioned Royal Decree 244/2016.

Therefore, according to [Appendix I](#) of Annex XII, there are a series of essential requirements that must be fulfilled by direct sale instruments, such as fuel pumps:

##### **Requirements of instruments for direct sale:**

- The measurement systems for direct sale must have a means of resetting the indicator to zero and preventing deviation in the amount measured.
- The indication of the amount on which the transaction is based must be permanent until all the parties involved in the transaction have accepted the result of the measurement.
- The measurement systems for direct sale shall be interruptible.

- In the event of existence of a percentage of air or gas in the liquid, it will not give rise to a variation in the error greater than the specified values.

Requirements of the fuel pumps:

- During the measurement, it will not be possible to reset the fuel pump indicators to zero.
- The start of a new measurement will be blocked until the indicator has been reset to zero.
- When the measurement systems have a price indicator, the difference between the indicated price and the amount calculated based on the unit price and on the indicated amount shall not exceed the amount corresponding to Emin. However, it is not necessary for this difference to be less than the minimum denomination of the currency unit.

Likewise, the measurement vessels shall fulfil the conditions established in metrology standards and which are necessary to verify the dispensing devices. In particular, the measurement vessel shall be officially certified and calibrated with the established frequency in order to guarantee the reliability of the measurement, and to be able to determine the fulfilment of the applicable metrology standards as regards maximum tolerated errors in the dispensing devices.

## **IV.2 Regulations for the Defence of Consumers and Users**

[Royal Legislative Decree 1/2007, of 16 November](#), on the Defence of Consumers and Users, establishes specific obligations for protecting the health and safety of consumers and users. Specifically, it regulates *“the maintenance of the necessary control such as to be able to quickly and effectively verify the origin, distribution, destination and use of potentially unsafe goods, those containing substances classified as hazardous or subject to traceability obligations.”* To this end, also, the personnel who will be *handling substances classified as hazardous* must be duly trained.

Likewise, Article 14.2 of Royal Legislative Decree 1/2007 establishes that: *“In order to ensure the protection of the health and safety of consumers and users, the competent public authorities may establish regulatory measurements provided in any phase of production and marketing of the goods and services, particularly in relation to their control, monitoring and inspection.”*

### **IV.3 Industrial Sector Regulations**

The state regulations of the industrial sector considers it sufficient, in order to safeguard the imperative reasons of overriding public interest invoked, arising from possible safety externalities, to periodically submit to reviews, tests and inspections. Legally, said reviews, tests and inspections would be compliant with the provisions of [Article 12.2 of Law 21/1992, of 16 July](#), on regulatory compliance in industry.

In particular, Article 12.2 of Law 21/1992 establishes that *"Industrial facilities, equipment and products must be built or manufactured in accordance with the corresponding regulatory requirements, which may establish the obligation to verify their functioning and state of conservation or maintenance by means of periodic inspections."*

Likewise, Article 9 of the Regulation of Oil Facilities, approved by Royal Decree 2085/1994, of 20 October, on maintenance and inspection, establishes that the mandatory periodic maintenance revisions and inspections of the facilities included therein shall be indicated in the complementary technical instructions of the Regulations.

Therefore, according to Complementary Technical Instruction MI-IP 04, and specifically Chapter II of its Annex I, in the case of service stations with self-service dispensing devices, the handling instructions must be in a visible and well-lit place. Furthermore, self-service dispensing devices shall include a device that limits the supply to 90 litres of fuel or to a maximum operating period of three minutes. Likewise, all the dispensing devices, regardless of whether they are located in an attended or unattended SS, shall include the following safety devices

- Fuel pump shut-down device if there is no flow demand one minute after lifting the dispensing nozzle.
- System for resetting the counter to zero.
- Trigger device in the dispensing nozzle when the level is high in the tank of the user's vehicle.
- Supply cut-off device, in dispensing devices with electronic counter, in the event of failure of the counter, impulse transmitter or price and volume indicators.
- Earthing of all the components.

- The resistance between the ends of the hose shall be less than 1 MZ.

Chapters III and V of the same Annex also include the fire-fighting protection measures with which service stations must be equipped. In this case, all the permanent installations for retail fuel distribution must be endowed with fire-fighting equipment, a water hydrant connected to the mains for use in case of emergency and portable fire-extinguishing equipment. Likewise, a sign will be exhibited in a visible place indicating the prohibition to smoke, light fires or refuel with the lights of the vehicle switched on or the engine running. And in the case of self-service or unmanned service stations, the competent industrial service of the corresponding autonomous region may request the existence of automatic fire-fighting equipment.

Lastly, Annex I of [Complementary Technical Instruction MI-IP 04](#)<sup>21</sup> also determines the need and frequency of the periodic inspections and tests of the equipment located on the premises. In particular, inspections must be carried out at least annually on the following equipment:

- a) Double-wall tanks with automatic leak detection
- b) Tanks buried in a waterproof trough with standpipe
- c) Metal tanks
- d) Plastic tanks
- e) Pressure tests
- f) Piping
- g) Cathodic protection
- h) All dispensing devices

The inspections and tests must be conducted by a duly accredited competent control body, which shall certify the proper functioning of each of the units.

#### **IV.4 Regulations of the Autonomous Regions**

Various autonomous regions have approved regulations on unattended service stations that go beyond state regulations on safety in service stations.

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<sup>21</sup> See [Royal Decree 2201/1995, of 28 December](#), approving Complementary Technical Instruction MI-IP 04 "Permanent facilities for retail fuel and petroleum fuel distribution at retail facilities".

Below, we analyse the possible regulatory barriers identified in the different regulations of the autonomous regions.

**Autonomous Region of Navarre**

<b>Restrictions</b>	<b><u><a href="#">Decree 182/1997</a></u></b>
Continuous Fuel Pump Maintenance	<i>When a petrol or diesel oil dispensing device malfunctions or has a measurement defect, in addition to suspending the supply activity thereof, a sign bearing the legend "Out of service since..." must be placed on the affected device, indicating the day and month. Likewise, in those cases where water and air supply devices malfunction or make measurements that fall outside the permitted tolerance, information shall be provided on such situations by means of signs fixed to the affected devices bearing the following legends, as applicable: "Water, out of service since..." or "Air, out of service since...", indicating the day and month in both cases.</i>
Characteristics of the Measurement Vessel	<i>In order to verify the correct measurement and amounts of fuel supplied, all retail petrol and automotive diesel oil supply facilities shall have, as a verification tool, a bottle or measurement vessel with a capacity of 10 litres, notwithstanding the number, type and composition of the tools established in metrological regulations as necessary for verifying the dispensing devices. The aforementioned 10-litre measurement vessel shall be officially certified and calibrated with the established</i>

	<p><i>frequency in order to guarantee the reliability of the measurement. Failing information on its composition, it must be made of a material with mechanical resistance and resistant to chemical attack, completely transparent and graded in percentages or millimetres, in order to be able to determine the fulfilment of the applicable metrological regulations as regards maximum errors tolerated in the dispensing devices. The measurement vessel will be at the disposal of the users and of the Government inspection service.</i></p>
<p>Mandatory Attended Service</p>	<p><i>All retail petrol and automotive diesel oil facilities shall have at least one person responsible for the services provided therein, for the purpose of guaranteeing the exercise of the rights recognised in this Decree.</i></p>
<p>Characteristics of the Informative Sign</p>	<p><i>The informative parts of the informative column or sign as regards the information contained in this article must have minimum dimensions of 100 x 80 centimetres and be disposed at a height of no less than 2 metres, except when urban planning regulations condition these minimum dimensions.</i></p>
<p>Complaint Forms Available to Customers</p>	<p><i>All retail automotive fuel supply facilities shall have complaint forms available to customers, worded at least in Spanish, pursuant to the official specimen established in Annex</i></p>

	<i>I of this Decree and which will consist of an original white sheet and two copies (pink and yellow).</i>
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Source: [Autonomous Region of Navarre 182/1997](#)

### **Autonomous Region of Andalusia**

<b>Restrictions</b>	<b><u>Decree 537/2004</u></b>
Supervision of the Filling Operation	<i>The facilities shall comply with the regulations in force and must pay special attention to ensuring that nobody smokes or lights matches, uses lighters or mobile phones or any other similar device within the zone defined as hazardous by Royal Decree 2201/1995, of 28 December, or refuels vehicles with the engine running or the lights switched on. In the event that any person fails to comply with the foregoing prohibitions, the fuel supply shall be interrupted immediately. If, after the relevant warning, the person causing the hazard persists, the situation will be reported to the security forces.</i>
Characteristics of the Measurement Vessel	<i>All establishments will be equipped with at least one 10-litre vessel or receptacle, duly calibrated with traceability to national standards, at least every three years, by a duly accredited laboratory, and which will be exclusively handled by personnel of the facility so that the consumers and users who wish can verify the accuracy of the measurement of the amount of product supplied by the</i>



	<i>dispensing devices.</i>
Mandatory Attended Service	<i>If the self-service system is established in the daytime, there must be at least one person in the establishment to attend the request for fuel supply made by a customer whose personal circumstances prevent or make it difficult for him or her to perform the operation personally.</i>
Characteristics of the Informative Sign	<i>All facilities shall be obliged to exhibit to the public in its interior, in a permanent manner and in a perfectly visible and legible place, at least in Spanish and in characters of a size such that it can be read from the interior of the vehicle, an informative sign with minimum dimensions of 130 x 100 centimetres, at a height of no less than 1.5 metres.</i>
Complaint Forms Available to Customers	<i>Complaint/claim forms available to consumers on request. In the event that the claim refers to the amount of product supplied, the service provider shall first allow verification by the consumer pursuant to Article 5 of this Decree. If the result coincides with that indicated by the fuel pump or falls within the permitted tolerance, the claim will be considered resolved, unless the consumer expresses his or her disagreement with the process or the result of the measurement made. If the measurement falls outside the legally accepted tolerance, the person responsible for the facility must place the questioned fuel pump out of</i>

	<p><i>service immediately and within the following three business days proceed pursuant to the Decision of 19 November 2002, referred to in Article 3.3 of this Decree.</i></p>
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Source: [Decree 537/2004](#)

### **Castilla La Mancha**

<b>Restrictions</b>	<b><a href="#">Decree 33/2005</a></b>
<p>Continuous Fuel Pump Maintenance</p>	<p><i>In the event that a dispensing device or element thereof malfunctions or cannot supply a certain fuel due to lack of stock or to the performance of loading and unloading activities, a sign bearing the legend "Out of service since..." shall be placed on the dispensing device, for the duration of said circumstance, in a perfectly visible and legible manner, indicating the day, month and type of fuel affected.</i></p> <p><i>In the event that the fuel supply in the dispensing device is completely suspended due to the fact that the malfunction or measurement defect affects all the fuels it supplies, a sign bearing the legend "out of service since...", indicating the day and month, shall also be placed on the dispensing device.</i></p>
<p>Continuous Maintenance of the Pressure Measuring Device and the Water Supply Device</p>	<p><i>When a tyre pressure measuring device malfunctions a sign must be placed on the affected device, in a perfectly visible and legible manner, bearing the legend "out of service since...", indicating the day and month.</i></p>

	<i>When the water supply device malfunctions, a sign must be placed thereon bearing the legend "out of service since...", indicating the day and month.</i>
Characteristics of the Measurement Vessel	<i>The retail petrol and automotive diesel oil distribution facilities for consumers and users shall have a 10-litre measuring vessel or receptacle as a verification tool available to the public and, where applicable, to the Government inspection service.</i>
Mandatory Attended Service	<i>All retail petrol and automotive diesel oil facilities shall have at least one person on the premises, while open and in service, responsible for the services provided therein, for the purpose of guaranteeing the exercise of the rights recognised in this Decree.</i>  <i>Persons with physical disabilities that prevent them from using the self-service option shall be attended by a person responsible for the facilities.</i>
Characteristics of the Informative Sign	<i>The informative sign shall have minimum dimensions of 100 x 80 centimetres and shall be disposed at a height of no less than 2 metres, except when the urban planning regulations determine these minimum measures.</i>
Complaint Forms Available to Customers	<i>All automotive fuel supply facilities shall have complaint forms available to users pursuant to Decree 72/1997, of 24 June (LCLM 1997, 108), on Complaint Forms of Consumers and Users, and the Order of the of the Ministry of Health, of 28 July 1997 (LCLM 2000, 289), approving consumer and user complaint forms and their informative sign.</i>

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Source: [Decree 33/2005](#)

### Region of Murcia

Restrictions	<a href="#">Law 7/2015</a>
Mandatory Attended Service	<p><i>Pursuant to Article 4 of this Law, all retail petrol and automotive diesel oil facilities shall have at least one person on the premises, while open and in service, responsible for the services provided therein, for the purpose of guaranteeing the exercise of the rights recognised in this Decree.</i></p> <p><i>Persons with a disability that prevents them from using the self-service option shall be attended by a person responsible for the facilities. All notwithstanding that established for those facilities that enjoy a special distribution regime and, in particular, for co-operatives that do not provide services to third parties.</i></p>

Source: [Law 7/2015](#) of the Region of Murcia

### Autonomous Region of Valencia

Restrictions	<a href="#">Law 10/2015 of the Autonomous Region of Valencia</a> <sup>22</sup>
Mandatory Attended Service	<p><i>An Additional Provision Two has been introduced in Law 1/2011, with the aim of guaranteeing the rights of consumers and users of the collectives of Article 6 (on special protection), at</i></p>

<sup>22</sup> [Law 10/2015, of 29 December, on tax measures, administrative and financial management, and organisation of the Regional Government.](#)

	<p><i>all service stations while open and during the day, appointing a person responsible for the services provided to guarantee the rights of this law. Persons with physical disabilities that prevent them from using the self-service option shall be attended by a person responsible for the facilities.</i></p>
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Source: [Law 10/2015](#) of the Autonomous Region of Valencia

### **Balearic Islands**

<b>Restrictions</b>	<b><a href="#">Decree 31/2015</a></b>
Supervision of the Filling Operation	<p><i>Guarantee the safety of the facilities and their maintenance in correct availability and operation, according to the specific provisions that regulate the firefighting equipment and ensuring the fulfilment of the basic safety conditions therein, both by the employees and by the users of the facilities, not allowing them to smoke or light matches or use lighters in the fuel supply zone, not allowing the refuelling of vehicles with the engine running or with the lights switched on, and not allowing the use of mobile telephony while refuelling in the zones established for such purposes.</i></p>
Characteristics of the Measurement Vessel	<p><i>The aforementioned 10-litre measurement vessel shall be officially certified and calibrated with the established frequency in order to guarantee the reliability of the measurement.</i></p> <p><i>It shall be composed of a material with mechanical resistance and resistance to chemical attack, completely</i></p>

	<p><i>transparent and graded in millilitres, for the purpose of determining the fulfilment of the applicable metrology standards as regards the maximum errors tolerated in the dispensing devices.</i></p> <p><i>The measurement vessel shall be at the disposal of the users and of the Government inspection service at all times.</i></p>
Mandatory Attended Service	<p><i>All the retail petrol and automotive diesel oil facilities shall have, while open and in service, at least one person responsible for the services provided therein, for the purpose of guaranteeing the exercise of the rights recognised in this decree.</i></p>

Source: [Decree 31/2015](#) of the Balearic Islands

**Other Autonomous Regions: Aragón, Canary Islands, Madrid, La Rioja, Extremadura, Castilla y León, Asturias and Cantabria.**

Other autonomous regions also have regulations relating to the protection of consumer rights in the petrol and automotive diesel oil service in retail supply units. Such is the case of the Autonomous Region of Aragón, whose [Decree 105/1995](#), of 8 May, includes the restrictions listed above, such as the obligation of having complaint forms for users and approved measurement vessels at customers' disposal.

The Autonomous Region of the Canary Islands also approved [Decree 173/1994](#) on the protection of consumer rights in the supply of fuels, according to which the person responsible for the facilities shall not supply vehicles with the engine running or with the lights switched on. When the fuel pumps or water or air supply devices malfunction, a sign must be placed bearing the legend “*Out of service since...*”, indicating the day and month. And the service stations must have complaint forms at users' disposal.

[Decree 147/1998](#), of 27 August, of the Autonomous Region of Madrid (revised in 2002), on the protection of the rights of consumers and users in the petrol and automotive diesel oil supply service at retail facilities, establishes that in the event that some dispensing device or element thereof malfunctions, a sign shall be permanently placed on the dispensing device, in a perfectly visible and legible manner, bearing the legend “*Out of service since...*”, indicating the day, month and type of fuel affected. The same procedure applies to air pressure measuring devices. In the case of the Autonomous Region of Madrid, the “*complaints forms*” shall consist of a single set of forms comprising an original for the public authority, one copy for the establishment and another copy for the claimant, which must be stamped by the consumer protection body of the Autonomous Region of Madrid.

[Decree 46/1996](#) of La Rioja also establishes that a sign bearing the legend “*Out of service since...*”, indicating the day and month must be placed, both in the case of malfunctioning fuel pumps and in the case of water and air measuring devices. Likewise, all the automotive fuel supply facilities shall have “Complaint Forms” at the disposal of the users and shall have a measuring bottle receptacle at the disposal of the users and inspection services.

Furthermore, the autonomous regions of the [Canary Islands](#), [Castilla y León](#), [Asturias](#), Cantabria, [Extremadura](#), and [Madrid have draft regulations](#).

Lastly, it should be noted that some autonomous regions have included provisions in their regulations whereby it is obligatory to place single-use gloves and paper devices specially adapted to this type of facilities and near the dispensing devices at users' disposal to perform the refuelling operation. All that in order to avoid the direct contact of the users with the distribution equipment.

It follows that most of the autonomous regions have approved (or are in the process of approving) regulations on the supply of fuels through service stations which are currently, or may be if approved, restrictive for accessing and exercising this activity.

Therefore, an exhaustive analysis is needed of the conditions of competition in the automotive fuel supply market through unattended service stations in Spain and of the restrictions that can constitute a barrier to the entry and exercise of this activity and which are unnecessary, disproportionate and discriminatory for unattended SS operators.

## V NECESSITY AND PROPORTIONALITY OF THE IDENTIFIED RESTRICTIONS

The analysis of the regulations on unattended service stations must be adapted to the principles of efficient economic regulation. That is, a restrictive regulation of the competition is justified only in case of verifying the existence of a market failure that endangers one or more imperative reasons of overriding public interest that the public sector must protect through such restriction. Once the market failure and the imperative reason to be protected have been detected, such public intervention must have a causal link with the objective pursued by the regulation (principle of need). Additionally, the intervention must be proportionate to the objective pursued, i.e. it must introduce the minimum possible competitive distortion (principle of proportionality) and not be discriminatory.

Information asymmetry<sup>23</sup> is probably the most frequent market failure and the most relevant in the case of service stations. When formalising a transaction there is informative asymmetry, i.e. the agent that wishes to acquire the good or service (in this case the supply of automotive fuel) may not be aware of certain elements thereof and relative to its provision (safety-related elements, product quality, etc.). As a consequence, many transactions may not be completed, meaning the market will not necessarily produce an efficient assignment. This suboptimal result means there may be justification for a possible public intervention.

Such public intervention may be through technical regulations or certification systems, such as the metrological control of the State, essential to ensuring the proper functioning of the market economy. Both are key to exchanging the most sophisticated products and services, given that it is crucial to accurately know, or at least guarantee, the physical characteristics of the exchanged products and goods. Likewise, public intervention can also be performed through the implementation of specific regulations for the protection of the consumers and users. Consumer protection is an objective mostly aligned with the defence and promotion of effective competition in the markets, given that the final beneficiary of the adequate operation of both mechanisms is the consumer and user, who

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<sup>23</sup> There are other flaws in information in this market, such as the existence of significant search costs for consumers who must often go to unknown service stations and/or with prices not known in advance. Market competition itself is sometimes the most effective instrument for reducing search costs. In other situations, the intervention of the public sector may ameliorate imperfect information ([www.geoportalgasolineras.es](http://www.geoportalgasolineras.es))



obtains better commercial conditions in the form of price, quality, availability, variety and innovation.

However, at times, a wrongly conceived protection of consumer and user rights and interests may, in practice, be harmful to consumers, in terms of a smaller offer or inefficient prices. This would be the case of consumer protection regulations that are disproportionately guarantee-based, which can unnecessarily increase operator and consumer transaction costs or even reduce consumers' ability to choose.

In order for public intervention to improve the market results, it must be designed according to the criteria of need, proportionality and minimum competitive restriction. If the restrictions identified in the preceding section do not respond to the criteria of need and proportionality, they cannot be justified and should be eliminated. Likewise, if there are justified restrictions but their impact on the level of market competition could be lower if alternative measures were adopted, these should also be reviewed.

The elimination of restrictions on competition included in the regulatory framework of the supply of automotive fuels through service stations is closely related to the elimination of limitations on the free circulation of services and the freedom of establishment. Therefore, a regulatory framework which enhances these freedoms contributes to lower entry barriers for operators and fewer limitations on the provision of services, and thus contributes to driving market competition. This means it is advisable to leverage this opportunity to revise the restrictions identified in the regulations studied and to propose the elimination of those which are unjustified due to being unnecessary and/or disproportionate.

In accordance with the regulations analysed above, there is a series of conditions determined by state or regional regulations which are mandatory for all supply units and, therefore, for unattended service stations, which could constitute a priori a restriction on the entry to and exercise of this activity. Each of them is analysed below in order to determine their need and proportionality.

#### **V.1 Obligation of the existence of a responsible person at the supply point**

In some of the regional regulations and draft regional regulations analysed, there are provisions that require the full-time or part-time presence of a physical person in the supply units. These include:

- I. *Obligatory attended service* (particularly to guarantee the protection of especially vulnerable users such as people with disabilities).
- II. *Supervision of the Filling operation* (safety monitoring at the fuel distribution facility to prevent refuelling with lights switched on or the engine running, or users lighting a flame on the premises).
- III. Continuous maintenance of the pressure measuring device and of the water supply device.

The explicit obligation of attended supply directly requires the presence of personnel at service stations, while the continuous maintenance of the equipment and the supervision of the filling operation indirectly requires the presence of personnel. Such an excessively detailed control of the facilities and of the filling operation increases the barriers to the entry and exercise of this activity, as well as its operating costs.

Despite these obligations imposed by regional regulations in certain autonomous regions, the fuel supply and payment activity can be carried out directly by the consumer, without the need for the intervention of an employee. This has been demonstrated for years in other European countries where the unattended SS format is more widespread.

Operators must be able to offer the supply service through the employee in a voluntary and additional manner, making it possible to freely differentiate these attended service stations from unattended SS. Self-service or non-self-service constitutes a competition variable between service stations which must not constitute a mandatory requirement, due to the fact that its imposition adversely affects consumers and users via less competition, less innovation and higher prices for the same quality. Some operators will prefer to position themselves with greater advantages in terms of costs, while others will position themselves through offering more services to consumers.

As indicated above, at times a regulation aimed, a priori, at protecting the rights and interests of consumers and users may, in practice, not benefit them. In the case at hand, the obligation of attended service does not benefit consumers in terms of prices, safety, or service quality.

Firstly, in relation to prices, as indicated previously, the study carried out for the European Commission Executive Agency for Health and Consumers determined that for 13 of the 14 countries analysed, the retail prices of unattended service stations were lower, yielding an average price differential of

1.9 in 95-octane petrol and 2.7% in automotive diesel oil.<sup>24</sup> This differential is based on more than 600 observations made over an eight-year period (specifically, from January 2005 to January 2013).<sup>25</sup> Therefore, it is possible to conclude that, in the vast majority of cases, unattended service stations have boosted competition in the market of automotive fuel through SS, putting downward pressure on the prices of both fuels.

Secondly, as regards the safety of the facilities and fuel supply, state regulations guarantee safety at unattended service stations. [Royal Legislative Decree 1/2007, of 16 November](#), on the Defence of Consumers and Users, establishes specific obligations for the protection of the health of consumers and users that guarantee safety but do not establish the obligation of attended service. Specifically, it regulates *“the maintenance of the necessary control to be able to quickly and effectively verify the origin, distribution, destination and use of potentially unsafe goods, those containing substances classified as hazardous or subject to traceability obligations.”*

Although the presence of qualified personnel is a form of fulfilling the obligation of verifying the distribution and handling of hazardous substances, it is not the only way to ensure this control. In this regard, the rules included in the regional regulations go beyond the Royal Decree on the Defence of Consumers and Users, specifying in a discriminatory way how such control must be exercised, reducing the possibility of companies competing with different business models and innovating with formats established in the EU without evidence of greater levels of danger justifying their elimination or discrimination in the market.

Unattended service stations can guarantee the safety of the facilities through fire detection and extinction systems that fulfil the requirements of Technical Instruction MP-IP04. Additionally, unattended service stations may have a 24-hour surveillance system, as well as an incident monitoring and response system, that will guarantee the correct provision of the fuel supply service in the same manner as in attended service stations.

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<sup>24</sup> [http://ec.europa.eu/consumers/consumer\\_evidence/market\\_studies/vehicle\\_fuels/docs/study\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/market_studies/vehicle_fuels/docs/study_en.pdf). Number of observations: 643. Observations made in 14 countries from January 2005 to January 2013.

<sup>25</sup> The same study included a quantitative analysis of the impact on prices of a series of structural market variables. Among these, an attempt was made to determine the relationship between fuel prices and the market share of the unattended service stations. However, the results were not sufficiently robust to conclude the existence of an unequivocal relationship between the two variables. The problems identified included differences in income between the countries, the difficulty of obtaining data for the statistical sample and the existence of other factors whose impact could not be correctly isolated.

Furthermore, state regulations consider periodic revisions, tests and inspections sufficient to safeguard the imperative reasons of overriding public interest arising from possible safety-related externalities. Legally, such revisions, tests and inspections would comply with the provisions of [Article 12.2 of Law 21/1992, of 16 July](#), on Industry, on regulatory compliance, and the provisions of Article 9 of the Regulations of Oil Facilities, approved by [Royal Decree 2085/1994, of 20 October](#).

There are also other safety regulations, applicable to all service stations regardless of their format, that guarantee the safety of the automotive fuel supply activity through service stations.<sup>26</sup>

The obligation of attended supply through fuel supply facility personnel does not appear in any of the regulations mentioned in Annex I. Therefore, there is no fulfilment of the principle of necessity to perform such a continuous and exhaustive control of the facilities, rather than a correct and adequate periodic control.

However, even under the hypothesis of the alleged need for the obligations mentioned above, this type of obligations should not constitute an entry barrier for unattended service stations, as it does not fit the principle of proportionality. In fact, there are alternatives to the physical presence of an employee to monitor leaks and risks associated with the facilities, correct filling operations and the continued maintenance of the facilities and their equipment.

In this regard, it should be noted that accidents<sup>27</sup> related to the operation of supplying fuels to end users are very infrequent. According to a study performed by the French Ministry of Ecology, Energy and Territorial Development<sup>28</sup> (*“Ministère de L’écologie, de L’énergie, du Développement Durable et de l’aménagement du Territoire”*) on accidents at service stations in France and in other countries such as the United States, Italy, the Netherlands, Turkey and Peru, during a period of fifty years (from 1957 to 2007), only 8% of

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<sup>26</sup> See Annex I.

<sup>27</sup> An accident is understood to be any unforeseen and unwanted event that interrupts the normal performance of an activity and gives rise to one or more of the following consequences: (i) personal injuries, (ii) damage or economic losses. Likewise, an incident is understood to be any unforeseen and unwanted event that does not have personal consequences nor gives rise to economic losses. All the events included in the French study are considered to be accidents, since they all had either personal or environmental consequences (with associated costs) or economic losses.

<sup>28</sup> *Petrol Station Accidents France, 1958 – 2007- MINISTÈRE DE L’ÉCOLOGIE, DE L’ÉNERGIE, DU DÉVELOPPEMENT DURABLE ET DE L’AMÉNAGEMENT DU TERRITOIRE.*

accidents occurred during the user refuelling operation, while the remaining 92% occurred during maintenance work, the supply of fuels to the tanks of the facility, etc. 87% of the accidents were associated with fuel leaks or spills.

The same study, based on the analysis performed, proposes a series of measures aimed at reducing the number of accidents at service stations. These measures include:

- Configuring leak detection systems using methods such as: the monitoring consumption and amounts delivered, supervision of tank filling operations, maintenance, refrigerated double wall tanks with leak detectors, etc.
- Configuring confinement systems adapted in the case of release of waste or leaks (retention, sealed zones, isolation valves of the storm drainage system, detection of hydrocarbons, etc.).
- Handling of the filling of the tank through clear and specific procedures.
- Regulating the inspection and maintenance of facilities and their safety devices.
- Installing equipment adapted especially for areas with explosive atmospheres.
- Guaranteeing safety in situ (direct or camera for surveillance of sensitive points).
- Complying with the minimum distances between facilities for limiting the effects of an accident.
- Investigating contaminated soil to limit the risk of contamination of underground water and identify scenarios susceptible of giving rise to accumulations of gas in confined areas.
- Informing and training employees in relation to the existing risks.

All the recommendations included in the French report refer to safety systems that could be implemented at any SS, whether attended, unattended or self-service. These safety measures could limit the potential risk of accidents at a SS. Furthermore, the mere existence of personnel at the SS does not appear as a measure or factor that could mitigate the risk of accidents or increase safety at service stations.

Likewise, in terms of service quality, it should be noted that most of the complaints received by sector organisations (or the operators themselves) are

related to fuel prices at service stations. Specifically, according to the report prepared for the European Commission on the operation of the automotive fuel market from the consumer perspective<sup>29</sup>, of all consumer complaints received by sector organisations and operators, 51% were related to price, 31% to fuel quality and 11% to unfair commercial practices. In consumer surveys carried out during the preparation of the study, 24% of the complaints were related to the wait time to refuel at service stations, 10% had problems at an unattended SS and could not find a person responsible, 9% complained about the quality of the fuel, 7% received a smaller amount of fuel than that paid for, 6% paid more than the price marked on the informative sign, etc. That is, while 10% of customers had problems refuelling at an unattended SS, 90% of the complaints of consumers in relation to the supply of fuels at service stations are linked to other types of problems. Of particular importance to final consumers is wait time at service stations and fuel prices. Both problems can be mitigated by opening new unattended service stations.

Lastly, according to Article [39.2 of Royal Decree-Law 4/2013, of 22 February](#), on measures in favour of entrepreneurs and stimulus for growth and job creation, amending Law 34/1998, of 7 October, of the Hydrocarbon Sector and, specifically, the wording of its [Article 43.2](#), indicates the territorial or urban planning instruments of regional and local authorities cannot regulate technical aspects of the facilities or request a specific technology. These facilities shall also be compatible with the uses that are suitable for the installation of activities with similar levels of danger, waste or environmental impact, without expressly specifying classification as suitable for service stations.

We can infer from the foregoing that the restrictions included in regional regulations that impose, directly or indirectly, the obligation of an attended service are unnecessary, disproportionate and unjustified. These restrictions also significantly limit competition in the sector, with clear penalties in terms of prices, innovation and wait times for consumers. For this reason, they must be removed from all the regional regulations that include them.

## **V.2 Service stations in co-operatives**

Pursuant to Article 43.1 of the Hydrocarbon Law:

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<sup>29</sup> Report: “CONSUMER MARKET STUDY ON THE FUNCTIONING OF THE MARKET FOR VEHICLE FUELS FROM A CONSUMER PERSPECTIVE”.

*"The retail petroleum product distribution activity shall comprise at least one of the following activities:*

- a) The supply of fuels to vehicles at facilities enabled for such purpose.*
- b) The supply to permanent facilities for consumption at the facility.*
- c) The supply of kerosene destined for aviation.*
- d) The supply of fuels for boats.*
- e) Any other supply for the consumption of these products."*

Service stations in co-operative regimes are typified in this article as permanent facilities for onsite consumption.

Some autonomous regions include, in their regulations, special conditions for service stations in co-operative regimes, exempting them from any of the aforementioned mandatory measures.

For example, in the case of the current draft regulations of the Autonomous Region of Extremadura, its Article 8 exempts co-operatives from the obligation of providing an attended service if the supply is made directly to their partners. However, during opening hours, service stations must have an employee on the premises responsible for the service provided. This restriction must be analysed from a dual perspective.

Firstly, the different treatment given to the provision of the service between partners and non-partners does not meet economic criteria. Partners in co-operatives do not require training in SS safety or the course of action to follow in the event of certain situations, due to which there does not seem to be an explanation for the unequal treatment between the two types of consumers.

Secondly, most of the co-operatives have been acting under the unattended SS regime for years, without any reports of accidents as a consequence of lack of personnel in the provision of the service. This fact constitutes an evidence that safety can be guaranteed without the need to have a person permanently onsite at the SS. Therefore, the regulations that introduce this obligation increase the costs of SS, reduce the possibilities of competition and constitute barriers to the entry of new operators in the market without guaranteeing a greater level of safety for consumers.

Due to all the above, service stations in co-operative regimes must fulfil the same legal provisions as unattended service stations, as there is no difference in terms of risks associated with the supply of fuel. For this reason, the

obligation of attended service for service stations in co-operative regimes or for self-consumption is considered unjustified.

### **V.3 Other restrictions**

#### *V.3.1. Metrology obligations*

The essential requirements envisaged in Royal Decree 244/2016, implemented by the Metrology Law, without assessing their need and proportionality, are linked to the technical characteristics of the fuel pumps, and these technical characteristics can be fulfilled regardless of the existence or non-existence of personnel at the supply unit.

However, regional regulations include, in some cases, specifications for the measurement vessel that go beyond the requirements included in state metrology rules. Likewise, the need for the measurement vessel to be officially certified and calibrated, in order to verify the correct measurement and the amounts of fuel supplied at all the retail petrol and automotive diesel oil supply facilities is also mentioned.

This verification by users is not duly justified and, additionally, is disproportionate. The measurement vessel must be, in all cases and if necessary, at the disposal of the Government inspection service, which will verify the proper functioning of the equipment by means of periodic inspections included in the Metrology Law. The need to place the measurement vessel at the users' disposal seems disproportionate and unjustified, given that the user of the service stations does not have the necessary technical knowledge to perform said measurements, nor is the existence of inspection mechanisms and maintenance that guarantees the proper functioning of the facility necessary. This obligation must therefore be removed from the regulations that contain it.

#### *V.3.2. Obligation to have complaint forms, gloves and paper at users' disposal.*

There are additional requirements, such as the requirement to have, at all times, complaint forms for users or the obligation to have single-use gloves and paper at the fuel supply units, that may represent a greater disproportionate administrative cost for unattended or self-service service stations in Spain. All to the detriment of effective competition in the market and the well-being of consumers and users.

In the case of gloves and paper at users' disposal, they are measures that, in any case, must be provided as complementary services to the fuel supply



service and that must be provided if possible, not mandatory and continuous. It would be sufficient for unattended service stations to make the efforts they consider necessary to place single-use gloves and paper at users' disposal to perform the refuelling operation. But it seems disproportionate to oblige self-service facilities to have gloves and paper dispensing devices specially adapted to this type of facilities and near the fuel pumps at all times, in order to avoid the direct contact of users with distribution equipment. This would require the presence of personnel at the facilities, when a correct replacement system for these devices would be sufficient to guarantee, in most cases, the existence of single-use gloves and paper for users.

A similar reasoning could be applied to the obligation of having complaint forms at the service stations. It does not seem necessary, to safeguard the rights and interests of consumers and users, to have complaint forms available at all times. The protection of consumer and user rights can be guaranteed by means of alternative or complementary means to physical complaint forms. That is, it would be sufficient to guarantee that users can file a formal complaint on the service received at a SS and this objective can be achieved by means of complaint forms at users' disposal or electronic channels through which users can file their complaints at any time and place (and not necessarily at the time of the provision of the fuel supply service). In this regard, it should be noted that the European Union advocates a harmonised and integrated system of the different systems of consumer complaints in the Member States, in order to compile and transmit the problems encountered by EU consumers in the different markets. To this end, the European Commission has a programme through which it provides IT systems for a harmonised and efficient management of complaints<sup>30</sup>.

## **VI CONCLUSIONS**

Regulations on unattended service stations must follow the principles of efficient economic regulation, and all the identified restrictions that limit the entry and exercise of this activity and are unjustified, unnecessary or disproportionate must be removed or amended. Therefore, a regulatory framework that promotes the appearance of new competitors, reducing the barriers to the entry and

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<sup>30</sup> [\(EC\) REGULATION No. 2006/2004](#) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 27 October 2004, on co-operation between the national authorities in charge of applying consumer protection legislation ("Regulation on co-operation in terms of consumer protection"). See also [consumer complaint data](#) of the European Commission.

exercise of this activity, contributes to driving competition in the market, thereby increasing consumer well-being. Likewise, this would contribute to the ultimate objective of Royal Decree-Law 11/2013, of 26 July, on measures in favour of entrepreneurs and stimulus for growth and job creation, whose provisions included amendments to Law 34/1998, of 7 October, on the hydrocarbon sector, oriented towards promoting competition in the automotive fuel market.

In the case of unattended service stations, and after a detailed analysis, the CNMC considers that the restrictions on competition detected in the analysed regulations do not comply with the principles of efficient economic regulation, and some of them represent a *de facto* exclusion from the market for this new service station format. That is, the restrictions identified and described herein do not comply with the criteria of need and proportionality, due to which they must be removed, amended or not introduced, as their existence cannot be justified. The removal or amendment of these restrictions, many of which are wholly new, would give rise to a regulatory framework that would promote the entrance of new operators in the retail market through unattended service stations. This type of service station contributes, as we have shown, to boosting the market, increasing the level of effective competition and reducing final fuel prices, thereby increasing the well-being of end consumers.

The comparative analysis at the European level and the actions of co-operatives in Spain over the last few decades provide evidence that the restrictions on the unattended SS format that limit their expansion and generate greater differential costs for this format are not necessary or proportionate.

In particular, the obligation to maintain a physical person on the premises, a restriction found in all the autonomous regions with approved regulations in relation to unattended service stations, increases costs and does not necessarily guarantee a higher level of safety. There are safety regulations, applicable both to attended and unattended service stations, that guarantee an adequate level of safety at the facilities.

Other obligations, such as the obligation of having complaint forms, gloves and paper at users' disposal and the obligation of having certified containers in accordance with the metrology rules at users' disposal, also represent limitations on the activity which are either not necessary or have less distorting alternatives.

There are also limitations on agricultural and agri-food co-operatives supplying non-partner third parties that unjustifiably limit competition in the automotive fuel retail market. It is therefore necessary to amend the legal provisions that restrict the volumes of sales by this type of co-operatives to non-partner third parties, in

order to increase competitive pressure in the market and push automotive fuel prices downwards.

## **VII RECOMMENDATIONS**

After analysing the regulations applicable to unattended service stations, the CNMC deems it advisable to remove or amend the provisions included in the analysed regulations that establish the obligation of attended service, in addition to those that limit competition in the automotive fuel retail market, either by hindering access to and the exercise of the retail activity of unattended service stations or by increasing the costs of the said activity.

Due to the foregoing, the CNMC proposes the following recommendations:

- I. Removing all provisions that include the obligation of attended service, whether directly by means of the obligation of having personnel on the premises or indirectly through the obligations relative to the continuous maintenance of the fuel pump and/or of the pressure measuring device and of the water supply device, or to the physical supervision of the filling or refuelling operation.
- II. The evidence shows that agricultural co-operatives have operated for years in accordance with regulations, without the need to have a physical person at the retail fuel distribution facilities. There is no evidence of significant incidents that could have been avoided by the presence of a physical person at the supply point. Therefore, it is recommended that this regulation on the provision of the service applicable to co-operatives be applied in a non-discriminatory manner to all types of unattended service stations.
- III. Considering that, at present, the activity of agricultural co-operatives in retail fuel distribution is unjustifiably restricted with a limit of 50% of the volume of transactions with non-partner third parties. This limit lacks economic justification and its removal is compatible with both the preservation of the purpose of the co-operative and an efficient economic regulation. Therefore, to favour competitive pressure in this market, agricultural co-operatives and most importantly, consumers and users, the amendment of Article 93 of Law 27/1999, of 16 July, on Co-operatives is proposed, eliminating the restrictions imposed on the volume sold to non-partner third parties by co-operatives in the retail distribution of automotive fuels.

- IV. Eliminating other restrictions that could be contained in the regulations, such as obligations relative to the need to place a measurement vessel calibrated and certified in accordance with metrology standards at users' disposal, given that SS users do not have the necessary technical knowledge to perform said measurements, guaranteeing the proper functioning of the facility ex ante or ex post to the authorities responsible for conducting inspections. Likewise, any obligation that requires having complaint forms for users or single-use gloves and paper at all times at the fuel supply units should be amended, given that said requirements represent a disproportionate administrative cost for unattended service stations. The CNMC suggests an alternative wording of these requirements, indicating that it would be sufficient to *"guarantee that SS users can file a formal complaint,"* without indicating the means that must be used. In relation to the single-use gloves and paper, it would be sufficient to indicate that unattended service stations *"shall make the necessary efforts to provide gloves and paper devices for its users."*
- V. As recommended earlier by the CNC in the discussion paper on the Spanish property market, it is advisable to promote urban planning in which the uses delimited by the classification are not unnecessarily detailed, with the objective of increasing flexibility, reducing segmentation and favouring the assignment of land. Likewise, land classification should not be allowed to unjustifiably limit the offering in the distribution of fuels through service stations, with the establishment of restrictions on the opening of new service stations (restrictions in terms of distances, aesthetic restrictions, etc.).
- VI. Removing any provision, present or future, that can restrict the development of the automotive fuel supply retail market through service stations and/or limit effective competition in this market. In particular, any provision that restricts the appearance of new SS formats must be removed, for example in supermarket parking areas, motor vehicle workshops or owners' communities with facilities suitable for fuel storage. Innovation and dynamism in this market should be favoured to ensure effective competition and the well-being of consumers and users.



## ANNEX I

In particular, the following regulations ensure SS safety by including a series of indispensable safety requirements in terms of oil facilities, location of the service stations, fuel supply to end users, etc.:

- Complementary Technical Instruction MI-IP 01 on “Refineries”, approved by Royal Decree 2085/1994, of 20 October, on the Regulation of Oil Facilities.
- Complementary Technical Instruction MI-IP 02 on “Petroleum liquid storage parks” amended by Royal Decree 1562/1998, of 17 July.
- Complementary Technical Instruction MI-IP 03 on “Storage facilities for onsite consumption” amended by Royal Decree 1523/1999, of 1 October.
- Law 25/1988, of 29 June, on Roads.
- Royal Decree 1812/1994, of 2 September, on the Regulation of Roads.
- Order 16-12-1997, of the Ministry of Public Works, regulating accesses to National Roads, service lanes and the construction of service facilities.
- Law 8/1972, of 10 May, on the construction, preservation and operation of motorways under concession regime.
- Royal Legislative Decree 1/1992, of 26 June, on the Consolidated Text of the Law on the Land and Urban Development Regime.
- Law 6/1998, of 13 April, on the Land and Valuation Regime.
- Law 34/1998, of 7 October, on the Hydrocarbon Sector.
- Royal Decree 2487/1994, of 23 December, on the Statute regulating wholesale distribution and retail distribution activities by means of direct supplies to permanent facilities of fuels and petroleum fuels.
- Royal Decree 1905/1995, of 24 November, on the Regulation for the retail distribution of fuels and petroleum fuels at retail facilities.
- Royal Decree-Law 15/1999, of 1 October, approving measures aimed at liberalisation, structural reform and increased competition in the hydrocarbon sector.

